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SUBJECT: UKRAINE: POLITICAL WILL, NOT LAWS, WILL DETERMINE IF UKRAINE HAS CLEAN ELECTION

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Classified By: Ambassador for reasons 1.4(b,d).

¶1. (C) Summary. Parliament (Rada) adopted a number of amendments to the law on parliamentary elections June 1 as part of the compromise to hold early parliamentary elections on September 30. Some changes were needed, but a number of others reintroduced loopholes that contributed to election fraud during the 2004 presidential elections and that had been eliminated before the 2006 Rada elections. On the plus side, the newly amended election law clears up some technical aspects of holding the election and provides an appropriate timeline for the condensed 60-day schedule of early elections. However, the new law raises questions about how district and local election bodies will be formed and how the voter lists will be compiled, eases restrictions on voting from home, and introduces a 50-percent minimum voter turnout requirement for the first time in independent Ukraine. Various government bodies are now coming to terms with the new rules, but the short time frame, the lack of answers for many of these questions, and a Central Election Commission (CEC) thus-far paralyzed by politicization greatly enhance the likelihood that this election will be more problematic than the March 2006 elections.

¶2. (C) Comment. The potential for abuse and fraud exists, especially around the margins of the upcoming elections, but whether parties will exploit this opportunity remains unclear. The strategic benefits of holding a clean election, as Ukraine did in 2006, have been mostly overshadowed by 2007's fierce battle for power. Any of the parties could take advantage of the loopholes, although a lot of responsibility for the quality of the election will rest with the Party of Regions and the Presidential Administration. Regions--which introduced many of the dubious amendments to the law--will have the dominant position on every election body from the Central Election Commission down to the polling stations. In addition, they are the only one of the three top parties not yet fully committed to the election--they could still block the election via various means if they chose to do so. At the same time, the Presidential team led by Secretariat Head and Our Ukraine campaign manager Viktor Baloha, known for his willingness to play dirty, could also influence the outcome of voting through presidentially-appointed governors and district (raion) heads. We must continue to remind all parties that another free and fair national election is integral to Ukraine's burgeoning democratic reputation--a bad election could hurt Ukraine's integrity and slow down its EuroAtlantic aspirations. End summary and comment.

Parliamentary Election Law: Some Pros, Lots of Cons

¶3. (SBU) PolOffs received a readout of the OSCE's Office of Democratic Institutions and Human Rights (ODIHR) assessment mission to Ukraine July 11-13--designed to determine what the main pitfalls might be in holding free and fair elections; talked with two organizations that are closely monitoring the election process--USAID implementing partner Democracy Associates and election watchdog Committee of Voters of Ukraine (CVU); and attended an election seminar with the CEC commissioners and other experts to get a picture of the legal framework governing the September 30 elections. Experts from Democracy Associates and CVU head Ihor Popov told us that the newly amended election law did have some positive aspects. Prior to its adoption on June 1, there had been no language in the election law to address early elections, which work on a different timeline than normal Rada elections (60 days vice 120 days)--clarifications had been required. In addition, the amended law clears up issues related to training commissioners on the district election commissions (DECs) and polling station commissions (PSCs). Popov also said that some technical details on how to form DECs and how to print ballots were clearer now than they had been in the previous iteration of the law.

¶4. (C) However, they and the ODIHR mission all cautioned that the new law also opened the door to confusion as well as certain kinds of manipulation and abuse.

Formation and Staffing of Election Commissions

¶5. (SBU) Under the old system, the CEC established the 225 district election commissions (DECs), which in turn established the almost 34,000 polling station commissions (PSCs). Under the new law, the DECs from the 2006 elections, the CEC, and some temporary new DECs will all take a role in creating PSCs, creating confusion about who announces the final list of PSCs. In addition, the law says that the list

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of PSC commissioners, who are named by the five Rada factions, should be announced 2 days prior to the announcement of the PSCs themselves, meaning that PSC staffing will be designated before the PSCs are established. As a result the factions could end up inadvertently announcing commissioners to PSCs that are not subsequently formed or DECs could suddenly announce new PSCs to which the Rada factions did not name commissioners.

¶6. (SBU) The election law says that the factions in the Rada appoint the members of the DECs and PSCs, but some in the coalition, led by Speaker Moroz and also including several CEC members, have argued that there are only three Rada factions because Our Ukraine and BYuT factions resigned. While most people acknowledge that there are five factions, Moroz's refusal to admit it could cause procedural problems if he will not recognize Kyrylenko or Tymoshenko's signatures on official Rada documents. In addition, the ratio of party representation on the PSCs and DECs will match the ratio of factions in the Rada, so the coalition will control 60 percent of all commissions, while the opposition will control 40 percent. This only becomes a problem should the majority of commissioners choose not to provide a quorum (fifty percent plus one) at polling stations on voting day--a concern some observers held out as a potential Regions spoiler.

Voter Lists and the Role of the Border Guards

¶7. (SBU) CEC Deputy Head Usenko-Chorna expressed concern at an early July election seminar that the new election law does not give the CEC the wide-ranging authority to oversee voter lists that it did in 2006. The CEC will also not use a centralized list, so it cannot make sure that the people are not included more than once. In addition, the State Tax

Administration is now required to input names on voter lists, but whereas the 2006 voter lists held about 37.5 million people, the STA has more than 46 million people on its books, including many dead people.

¶ 8. (SBU) Of particular concern to compilation of the voter lists is that the law now requires the State Border Guard Service (SBGS) to report to the DECs Ukrainian citizens who leave Ukraine within three days of the election so that their names can be removed from the voters lists. The SBGS lacks the technical and institutional capability to successfully notify the correct DECs within such a short timeframe and according to Usenko-Chorna, there is no guidance on how DECs get the information to the correct PSCs. This problem could also have a regionally-imbalanced impact on the voting results, as more people may be removed from voter lists in Western Ukraine than in the East. Ukrainians crossing the border into Russia and Belarus show their internal passports, which have detailed information including patronymic and residence, making it easy to cross out the correct voter. Travelers to Poland and points West show their external passports, which do not contain the pertinent information, forcing the SBGS to send out more generic information to the election officials, which could result in multiple people with the same first and last name being removed from various lists.

¶ 8. (SBU) ODIHR was also worried that reopening voter lists for changes so close to the election, after they had already been sent to the PSCs, could increase the chance of other manipulations of the lists. Moreover, because it is legally prohibited for voters to protest problems with the voter list to the DECs or the courts within two days of the election, people erroneously removed from the lists or who return from neighboring countries before the election cannot be re-added to the lists. According to Development Associates, this is also more likely to effect those who live in Western Ukraine, where there are more border crossings.

¶ 9. (C) In addition, the SBGS could be used by different political groups in different regions to their advantage. The Service itself is not seen as loyal to one specific political party. although the head of the SBGS is Mykola Lytvyn, brother of former Rada Speaker Volodymyr, whose People's Party was on the cusp of the 3-percent barrier in 2006 and is running again.

Mobile voting

¶ 10. (SBU) The Rada also eased the restrictions on using a mobile balloting box to vote from home (intended for bedridden voters.) In 2004, mobile voting was a major source of fraud in some oblasts--in Mykolayiv oblast in the South,

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for example, 30 percent of voters voted from home in round two of the presidential election. In June 2005, the law was changed to require people to submit a doctor's note to the PSC ahead of time and to require monitors to accompany the mobile box on its rounds. As a result, in 2006, use of the mobile box was low. In the new law, no doctor's note or documentation to prove inability to travel to a polling station is required, meaning anyone can vote at home.

Ban on Absentee Ballotting

¶ 11. (SBU) All experts cited the new ban on absentee ballots as more a violation of constitutional rights than an effort to seriously limit voting (there were only 16,000 absentee ballots in 2006). However, experts did voice concern that it might hurt domestic observation, since observers do not usually observe in their own districts and will now be prohibited from voting. In addition, Popov said that voting from abroad has become more difficult--whereas before voters

could register at Ukrainian consulates to vote, now they must register with their home city. This is likely to have greater impact on migrant workers from Western Ukraine.

Fifty-percent Voter Turnout Requirement

¶12. (C) This is the first time independent Ukraine has had such a Soviet-style requirement. Most political analysts believe that it was added to the law as a back-up option, should Regions and its coalition partners decide that they wanted to scuttle the elections at the last minute by simply telling their voters not to show up. However, most people we talked to said this was not a serious concern because, if voting day arrives, then Regions will already have decided to participate. In addition, it would be easier for Regions to block quorums on the CEC, DECs, and PSCs, than to try to get voters not to vote. A second, perhaps unintended problem may be that if the ballots of voters who choose "against all" are counted as invalid, the turnout level will drop.

How Likely is Fraud and Abuse?

¶13. (C) Everyone we spoke with agreed that although the loopholes were worrisome, massive fraud was unlikely. Instead, they emphasized that the changes were undemocratic and unconstitutional, in large part because they could deprive many Ukrainian citizens of the right to vote. Whether there are abuses and/or manipulations around the margins of the vote will depend on how the parties decide to conduct themselves. For example, Democratic Associates observers said that on voting day 2006 although all the PSCs and DECs were formed in accordance with the law, there were violations in Odesa, Crimea, and Donetsk, and even pressure in Kyiv oblast--the commissions simply responded to political orders.

¶14. (C) Comment. We are concerned that in 2006 the major political parties attached more value to the elections being free and fair, but that this time parties believe that they have more to lose. In addition, there may not be enough time or good will to hold a well-run, clean election. It is clear that any of the top-tier parties, and even some from the second tier, could use these loopholes to their advantage on a local level. For example, Presidential Secretariat Head Baloha is known for his hardball tactics and was involved in a very dirty mayoral election in the Zarkapatiya town of Mukacheve in April 2004. Development Associates said that across the board most Ukrainian politicians simply do not think strategically enough to see how a bad election could harm Ukraine's and their personal long-term interests. They are focused on short-term calculations and how to amass power. Even some who understand to a greater degree about possible negative impact on Ukraine's EuroAtlantic aspirations may be hopeful that the West will be forgiving if the outcome of the elections is appealing. Those few who truly get it may have trouble convincing their allies that the difference between a March 2006 election and a November 2004 matters. End comment.

Regions Holds the Key

¶15. (C) Regions's decision to fully and actively participate in the elections will be key because the coalition controls the majority on every election commission from the CEC to the PSCs and Regions controls most of those. So far, the Party is preparing for the elections, but continuing to explore alternatives to a new vote, suggesting they still consider

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all options open at this point. For example, BYuT MP Nemyria told Ambassador July 20 that three senior members of Regions--DPM Klyuyev, Environment Minister Dzharty, and MP Sivkovych met with coalition allies to discuss the

possibility of finding enough opposition defectors to recant their Rada resignations to keep the parliament's quorum intact. (Note. On July 24, Dzharty asserted to Ambassador that Regions was going forward with election preparations. End note.)

¶16. (C) Moreover, there may be a split within Regions between the business wing that sees a continuation of the political crisis as harmful to their business interests and those that see winning at all costs as most important and believe that they can get away with it. Regions is still home to many of the perpetrators of electoral fraud in 2004. In particular, the rumors about the return to Regions of Viktor Medvedchuk, one of the authors of the fraudulent 2004 elections, and the continued leadership of DPM Andriy Kluyev, who ran the dirty tricks office in Yanukovych's 2004 campaign, suggest that there are people on that side willing to play dirty.

Composition of the CEC also Causing Problems

¶17. (C) The remaining question mark is whether the CEC--which will play such an integral role in whether the elections go well--can work productively. They have held only one meeting since the new composition was announced in late May. ODIHR, Popov, and others have noted the CEC's sharp polarization between the coalition-nominated and opposition-nominated members, many arguing that it is not a neutral body that can make independent decisions and that the politicization is inhibiting work. Popov also expressed concern that there could be more sick-outs to block the body from making decisions. One example of the CEC's current political paralysis is its continued avoidance of making a decision about dissolving the Our Ukraine party list despite the fact that the Kyiv Appeals Court ruled June 16 that it could and the High Administrative Court upheld the ruling July 17. The CEC has attempted to discuss with the Border Guards its role in the upcoming elections--they met in a working group format June 14--but there is still much work needed to be done in this area. The CEC has also tried to adopt some aspects now of the new voter registry law, which does not come into effect until October.

¶18. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.

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